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| 10/775,734      | 02/09/2004  | Richard Cinque       | RICHCO.004DV1       | 1534             |

20995 7590 09/03/2008  
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| EXAMINER |
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CASTELLANO, STEPHEN J

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| ART UNIT | PAPER NUMBER |
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3781

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09/03/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
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|                              |  |                               |  |
|------------------------------|--|-------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/775,734       | <b>Applicant(s)</b><br>CINQUE |  |
|                              | <b>Examiner</b><br>/Stephen J. Castellano/ | <b>Art Unit</b><br>3781       |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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Claims 1-10 are pending.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the present amendment, applicant adds a statement of intended use “so as to permit passage of a stem of a stemmed glass past the L-shaped prong.” Fig. 4 discloses that the stem of glass 21 is aligned at the same horizontal level as the L-shaped prong rather than moving past the L-shaped prong. Also, no statement can be found in the text of the originally filed application that recites that the stem moves past the L-shaped prong when a stemmed glass is inserted through hole 30 for drinking containers.

With the amendment filed April 21, 2008, applicant amends the passage to be “through the slot and into a position.” The applicant is now claiming a horizontal movement of the stem. The stem doesn’t move past the rightmost L-prong in Fig. 4 as Fig. 4 shows the stem to the left of this prong. Portions of the leftmost L-prong(s) are passed by the stem. However, the stem doesn’t entirely pass the L-prong as shown by the elevation view of Fig. 4. The new matter rejection is maintained. **This is a new matter rejection.**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 adds the language “wherein the stem extends pass the L-shaped prong.” This is a positive recitation of the stem of a glass and represents the combination of the glass with the refreshment center where previous claims were directed to the refreshment center only without the glass. There has been no change in the preamble to correspond with the change to the body of the claim to indicate that applicant is now claiming this combination. The metes and bounds of claim 1 can't be determined. Claim 1 is indefinite. The body of claim 1 further contradicts the combination of a refreshment center and stemmed glass as lines 7 and 8 recites that the slot permits passage of a handle of a mug rather than exclusively the passage of the stem of a glass and lines 9-10 state that tapered and non-tapered beverage containers are receivable by the L-prong.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cinque (5950856) in view of Bessett (3381825).

The claims are treated as a subcombination of a refreshment center without a stemmed glass.

Cinque discloses a refreshment center comprising a rigid mold (one-piece molded article) with a first recessed portion sized to receive a plate and a circular hole 30 with a slot 31 for a stemmed glass. Cinque discloses the invention except for the L-shaped prong. Bessett teaches a similarly configured refreshment center with a L-shaped prongs which support cups. It would have been obvious to modify the cup holder to have at least three L-shaped prongs in order to support the beverage container to reduce any stress on the sides of the circular opening of the holder.

Claim 1 has been currently amended by adding statements of intended use pertaining to (1) passage of the stem past the L-shaped prong and (2) the second end being configured to retain certain stemmed glasses with the base of the stemmed glass below the L-shaped prong. It is noted that a particular stemmed glassware item is not being claimed nor is any particular dimensional limitation about the stemmed glassware item implied. A base of a stemmed glass is wider than the stem and the bowl or receptacle of the stemmed glass is wider than the stem. Figure 4 shows these relationships of size for the stemmed glass 21 as well as the base diameter being less than at least some part of the bowl diameter. Bessett discloses no stemmed glass as far as the examiner is aware. However, Bessett clearly discloses in Fig. 3 that the L-shaped prongs can be moved outwardly to be spaced a width wide enough to allow a stemmed glass base that is wider than a stem and narrower than opening 16 to pass through and below at least one if not all of the L-shaped prongs. The opening 16 is narrow enough to engage a stemmed glass bowl wider than the opening's diameter. Therefore, the second end is configured to retain certain stemmed glasses such that a base of such glass is positioned below the L-shaped prong.

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Insofar as shown by applicant, Bessett's opening 16 and L-shaped prong is capable of permitting the passage of a stem of a glass past the L-shaped prong.

Re claim 3, opening 32 of Cinque allows the thumb to grip the refreshment center.

Re an interpretation that claim 1 represents the combination of a refreshment center and a stemmed glass, Cinque clearly discloses a stemmed glass in Fig. 4. It would have been obvious to modify dimensions of the stemmed glass, the slot, the circumference of the circular opening for the beverage container, the dimensions of the L-prongs and the location of the prongs so that at least one prong is passed as the stem of the glass passes through the slot and into a final stable and secure position supported by the L-prongs as motivated by a refreshment center and stemmed glass combination that is well proportioned such that all parts fit and work together in supporting the stemmed glass stably while allowing the stemmed glass to be easily removed. The L-prongs of Bessett are equally spaced and placed 90 degrees apart and modifying Cinque with the L-prongs would require similar spacing. The resulting structure would require the stem of the glass to move substantially past at least one L-prong to be stably supported.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cinque in view of Bessett as applied to claim 9 above, and further in view of Morris (3027826).

The combination of Cinque-Bessett discloses the invention except for the ID stick. Morris teaches an ID stick (see col. 1, lines 35-40). It would have been obvious to add the ID stick and insert it into a ID stick or utensil opening 40 of Cinque in order to advertise and add the utility of stirring in one device.

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new matter rejection. Also, the intended use limitations added to claim 1 are not

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sufficient to overcome the art rejection applied. Applicant contends that a stemmed glass inserted into opening 16 of Bessett can be supported only by its base engaging the L-shaped prongs. Applicant is incorrect. The examiner is not persuaded by applicant's remarks.

Applicant states that the combination of references requires Bessett to operate in a manner contrary to what Bessett teaches. It is Cinque that is being modified, not Bessett. Cinque operates as a refreshment center with the addition of the L-prongs. The L-prongs do not hamper the operation of Cinque in any manner. The examiner has not stated that the fingers of Bessett must be moved manually. There is no statement that is contrary to Bessett's teachings.

There is no claim language that precludes movable L-prongs. The claim language doesn't restrict the movement of the L-prongs.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/  
Primary Examiner  
Art Unit 3781

sjc